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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1448th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 13 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Ninth periodic report of Portugal (CERD/C/357/Add.1) (continued)

1. At the invitation of the Chairman, the Portuguese delegation resumed their places at the Committee table

2. Ms. FERNANDES (Portugal), responding to questions put to the delegation at the previous meeting, said that in accordance with a decree-law of 24 June 1975, nationals of former Portuguese colonial territories could acquire Portuguese nationality and thus obtain the same rights and duties as Portuguese nationals. In that connection, the Government considered that the adoption of a procedure for classifying citizens using so-called racial criteria would run against Portuguese historical, social and legal tradition. Moreover, a recent European directive of 24 June 2000 on equal treatment between persons specified that the European Union, of which Portugal was a member, rejected any theory attempting to determine the existence of separate human races. The Government of Portugal, for its part, considered data on racial discrimination to be unnecessary once a will to combat the problem existed. Moreover, it had just approved, with a view to ratification, the framework Convention for the protection of national minorities adopted by the Council of Europe in 1995, which stipulated in its article 3 that "persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the (...) framework Convention individually as well as in community with others". Apart from the Gypsies, no national minority group had as yet taken advantage of the provisions of that framework Convention.

3. Mr. MARRECAS FERREIRA (Portugal), responding to the question concerning the alleged existence of "subtle racism" in Portugal, said that any cases of racism in the country were isolated incidents. There were thought to be some 40,000 Gypsies living in Portugal, but that figure was approximate since the Portuguese Constitution did not allow differentiation on the basis of race. According to the latest official figures, Portugal had admitted 190,000 foreigners in 1999, and 25,000 in 2000, to whom must be added 25,000 other persons whose situation was in the process of being regularized pursuant to new legislation promulgated in January 2001. In total, 240,000 foreign nationals were said to live in Portugal.

4. The exemption in respect of the requirement for a written contract had been introduced for foreign workers to prevent the importation of illicit labour. Enterprises illegally using foreign labour were subject to fines or the annulment of their procurement contracts. No employment contract was necessary for foreign workers engaged in an activity within the European Economic Area or under the European Social Charter, or for workers who were nationals of countries possessing control mechanisms to prevent trafficking in labour.

5. As to whether foreigners had the opportunity of joining professional associations, enrolling in universities or obtaining loans, Portugal imposed no restrictions based on nationality. An applicant's eligibility for a bank loan depended on credit status, independent

of nationality. All foreigners had access to occupational training through the Institute for Employment and Occupational Training and the European Social Fund.

6. With regard to legislation regulating the work of foreigners, Portugal had become an attractive country for foreign labour by virtue of its low unemployment rate, which was estimated at 3.5 per cent. In addition, a new form of cooperation had been established between the Public Labour Inspectorate, the social security system and the Aliens and Frontiers Department in order to promote the integration of foreign workers into the labour market. If the Public Labour Inspectorate detected an irregular situation in connection with work contracts, it notified the Aliens and Frontiers Department since the situation might be due to an oversight on the part of the immigration services. The social security services would intervene to deal with confused situations.

7. As for access to health care and education, there was no discrimination based on race or nationality. Non-regularized foreigners needing care were treated forthwith, without being asked any questions concerning their background. Access to housing was guaranteed under special rehousing programmes to combat poverty, in particular through the elimination of shanty towns. When a shanty town was demolished, its former occupants were provided with alternative accommodation pending their rehousing in new buildings. It was not an issue whether their situation was regular or irregular.

8. With regard to case law relating to Gypsies, members of the two militias implicated in the case of the Gypsy dwellings in Vila Verde had been sentenced either to two years imprisonment or to prison sentences ranging from two to nine years for the crime of "terrorist association". The sentences handed down in connection with the case had acquired legal authority following rejection of the appeal made to the Supreme Court by the members of one of the two militias involved. The mayor of Vila Verde, who had ordered the demolition of the Gypsy dwellings under pressure from the two militias, had not been prosecuted in the absence of complaints and since, his decision had thus not been contested. However, it should be known that the mayor had not been re-elected: a sign of disapproval on the part of the local inhabitants. The newly elected mayor of Vila Verde had launched a series of programmes to benefit Gypsies, including educational and occupational training programmes, and programmes to combat social exclusion. As to the question of compensation for Gypsies whose homes had been destroyed in Vila Verde, no request had been submitted to that effect. It was important to stress that the Vila Verde Gypsies had remained in town and that their homes had been reconstructed elsewhere in the same locality, which meant that there had been no population displacement as a result of the incident.

9. Furthermore, the ninth periodic report of Portugal contained a section devoted exclusively to Guineans and Kosovars, since at the time when the report was being drafted, both their countries had just been afflicted by major crises. Considering the seriousness of the situation, the Government of Portugal had decided to grant temporary protection to nationals of Kosovo and Guinea-Bissau, to last as long as armed conflict and violations of human rights prevented them from returning to their country. The return of those persons to their country of origin had by no means been obligatory. Regarding asylum-seekers in general, Portugal granted Portuguese nationality to the children of asylum-seekers born in Portugal. The child of a

refugee was not eligible for Portuguese nationality unless the parents submitted a request to that effect. In cases of statelessness, Portuguese nationality was automatically granted.

10. The criteria to be met by immigrants seeking to regularize their situation were as follows: to have been resident in Portugal for at least six months, not to have been awarded a custodial sentence of more than one year and to possess the means to subsist in Portugal. Applicants whose situation had not been regularized had for the most part left voluntarily or been deported. There had however been no collective deportation of foreigners from Portugal. Lastly, concerning the status of the Office of the Portuguese High Commissioner for Refugees, it was an independent body composed of members of the judiciary which intervened during the administrative phase of consideration of the request for asylum. The body reviewed requests for asylum and produced the final binding opinion which determined whether the right to asylum was to be granted.

11. With regard to the dissemination of the work of the Committee, the Committee's concluding observations on Portugal's previous periodic report had been published in the Bulletin of the Bureau of Documentation and Comparative Law and were available on the Web sites both of the High Commissioner for Immigration and Ethnic Minorities and of the Attorney General of the Republic. Portugal had also carried out numerous activities in the framework of the United Nations Decade for Human Rights Education, 1995-2004. Furthermore, a programme devoted to minorities and racial discrimination was broadcast every Wednesday evening at 9 p.m. on public television Channel Two.

12. Ms. DIAS NOBRE (Portugal) said that the distribution of Portuguese workers by occupation was as follows: 44 per cent were machine operators, metalworkers or civil construction workers, 30 per cent were scientists, high-level professionals and executives, 15 per cent were clerical workers, salespeople or service sector employees, approximately 9.5 per cent were skilled workers and craftsmen and 1.5 per cent were farm workers and fishermen. The non-working population included students, housewives and retirees. Of the foreign population, 46 per cent were non-working.

13. Mr. LEITÃO (Portugal) said that the term "Gypsies" or, more precisely, "tziganes" corresponded to that people's wishes. Given that a large proportion of them were more vulnerable to social exclusion than the rest of the Portuguese population, he had personally proposed in 1995 the creation of a working group on problems encountered by the Gypsies. Numerous activities had since been undertaken in their benefit, including in the field of education and occupational training. Moreover, the Government continued to encourage the participation of cultural mediators, not only in schools but also within government bodies, in view of the important role that they could play in the prevention of racial discrimination and racism. Furthermore, a large number of journals and other publications were published to raise awareness of Gypsy history and culture.

14. In his capacity as High Commissioner for Immigration and Ethnic Minorities, he was directly answerable to the Prime Minister and had been appointed in 1995 with the task of facilitating the integration of immigrants and minorities. The activities of the High Commissioner were carried out in collaboration with the civil service departments and non-governmental organizations (NGOs) concerned. He also had the task of coordinating various

intergovernmental working groups, submitting proposals to the Government, conveying to it the opinion of consultative bodies and organizing campaigns to raise awareness of the rights of immigrants and of racism.

15. Mr. de GOUTTES asked why Act No. 134/99 prohibiting discrimination provided only for administrative sanctions and made no provision for criminal penalties. He would also like to know why, in the case of the Gypsy dwellings in Vila Verde, the judge had chosen the charge of terrorist association although the 1995 Criminal Code contained provisions regarding acts of racism. Could the delegation cite any other judicial decisions which penalized acts of racism?

16. Mr. ABOUL-NASR asked whether the High Commissioner for Immigration and Ethnic Minorities was empowered to act in the interest of victims, for example in the case brought up previously, in which the victim had been awarded compensation but had not received it because of failure to claim it. He would also like to know whether the term "Gypsy" used in the report and throughout the oral presentation could be taken as an insult in Portuguese.

17. Mr. YUTZIS (Rapporteur for Portugal) asked the delegation why the Framework Convention for the Protection of National Minorities adopted by the Council of Europe had never been invoked before the courts by members of minorities, Gypsies in particular, since, as the delegation had recognized, they were the chief victims of discriminatory behaviour and activities in Portugal. He also asked whether, in the case of the Gypsy dwellings in Vila Verde, any artificial persons or associations had been sentenced for terrorist association and whether those associations' activities had been prohibited or suspended as provided for in article 4 of the Convention.

18. Mr. DIACONU disagreed with the argument in the report that it was not possible to establish statistics on the ethnic origin of the population because the Constitution specifically prohibited distinguishing between citizens on the basis of origin and race. On the contrary, in his view, demographic statistics that identified the persons concerned as being an ethnic minority constituted a useful tool that could help the Government fine-tune its policies, in the field of education in particular, thus helping to preserve the identity of ethnic groups.

19. He also pointed out that the Framework Convention for the Protection of National Minorities was designed to follow up country policies in regard to minorities but could not be directly invoked by individuals. That being the case, the Council of Europe, which was competent to consider individual complaints, had received very few complaints from Portuguese citizens.

20. Mr. THORNBERRY said that he hoped that Portugal would soon ratify the Framework Convention for the Protection of National Minorities.

21. Mr. LEITÃO (Portugal), responding to the question about the connotations of the word "Gypsy", said that the Portuguese word "Cigano" was not regarded as pejorative. It was the name which all the Portuguese gypsy associations chose to use.

22. Mr. MARRECAS FERREIRA (Portugal) said that the reason why Act No. 134/99 provided only for administrative sanctions was that it had been drafted in order to fill a gap:

formerly, only criminal and civil sanctions had been provided for in domestic law. There were no other legal cases to be cited apart from those referred to in the report.

23. On the question of the charge of terrorist association in the case of the Gypsy dwellings at Vila Verde, he said that the explanation was that the judge had taken as his basis a whole series of articles of the Criminal Code and had determined that the vigilante groups' blocking of access to the dwellings involved various offences (coercion, abduction, terrorism, collective disobedience, threat to transport safety). He had retained only one heading, allowing for a specific definition of the offence. Given that the "terrorist organization" had emerged spontaneously and ceased to exist once the police dispersed the crowd, there had been no grounds for imposing sanctions on any artificial persons or organization. However, a number of natural persons had received sentences ranging from two to nine years' imprisonment.

24. Regarding the case mentioned by Mr. Aboul-Nasr in which compensation should have been paid to the victim of a racist attack, he said that the person had since received the sum due. On the other hand, the Gypsies whose dwellings had been demolished could not be compensated until the decision to order the demolition had been pronounced illegal by a court. Lastly, it was true that individuals believing themselves to be the victims of racial discrimination were not able to invoke the Framework Convention. The instrument had been mentioned to bring out the fact that the only minority which had chosen to define itself as such was the Gypsy minority. The Government would recognize as a minority any other group that wished for such recognition.

25. Mr. YUTZIS (Rapporteur for Portugal) expressed satisfaction at the quality of the dialogue, which had touched on questions such as the definition of a homogeneous and multicultural society, the situation of minorities and aliens, social mobility, the system of foreign workers' contracts, expulsion, compensation for the victims of racial discrimination and the dissemination of the Convention and the Committee's concluding observations. As far as the regularization of the situation of immigrants without documents was concerned, if the trend in Portugal was confirmed, that country would set an example for others faced with the same problem.

26. The CHAIRMAN said that the Committee had thus completed its consideration of the ninth periodic report of Portugal.

27. The Portuguese delegation withdrew.

Draft Concluding Observations on the Situation in Togo under the Review Procedure (CERD/C/58/Misc.15/Rev.1, Conference room paper, English only)

28. Mr. DIACONU (Rapporteur for Togo) said that, in his draft conclusions, the Committee regretted that the Togolese Government had submitted no report since 1981 and had not responded to its invitation to take part in the current session. It suggested that the Togolese Government should avail itself of the technical assistance offered by the Office of the High Commissioner with the aim of drawing up and submitting a report by January 2002 and urged the Government to resume its dialogue with the Committee as soon as possible.

29. The Committee's draft concluding observations on the situation in Togo were adopted, subject to any necessary editorial changes.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 7) (continued)

30. The CHAIRMAN reported that the Committee's secretariat had that morning received a periodic report from Jamaica for the period 1986-2000. The report had been submitted very late and the Committee was due to examine the situation in Jamaica under the review procedure at the current session. He proposed that that arrangement should be cancelled and that the report of Jamaica just submitted should be considered at the Committee's fifty-ninth session after translation into the working languages.

31. Mr. RESHETOV (Rapporteur for Jamaica) said he was glad that Jamaica had finally submitted a report and endorsed the Chairman's proposal that the report should be considered at the Committee's next session. Without going into the substance of the report, he said that it was at first sight incomplete and not drawn up in accordance with the Committee's guidelines.

32. The CHAIRMAN suggested to the representatives of Jamaica (present in the meeting room) that the Jamaican Government should at once take steps to provide a supplementary report or a revised version of the report that had been submitted, in the interest of the future dialogue between the Committee and the State party. He also instructed the Secretary to inform the Permanent Mission of Jamaica that the Rapporteur for Jamaica (Mr. Reshetov), and he himself as Chairman of the Committee, were at the Jamaican authorities' disposal to assist in drawing up the report. As he heard no objection, he would take it that the Committee decided to cancel consideration of the situation in Jamaica in accordance with the review procedure.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

Letter from Mr. Banton, former Committee member and Rapporteur

33. The CHAIRMAN said that, in reply to the letter which he had addressed to Mr.Banton at the beginning of the session on the Committee's behalf, Mr. Banton had written to him, asking him to forward his respects and good wishes to the members of the Committee, and also suggesting that a list should be drawn up of former Committee members who might wish to maintain a link with it. Such members could be sent a copy of the Committee's annual report and invited to write to the Chairman if they had any comments to make. Their letters would be circulated to the members of the Committee when sessions were held.

34. He was himself in favour of the suggestion and, as he heard no objection, he would take it that the Committee approved the proposal.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 11) (continued)

35. Mrs. McDOUGALL (Contact Group Coordinator) invited the members of the Committee to send her their written suggestions for amendments to the draft Declaration and Programme of Action of the World Conference. The revised version of the draft would be available at the end of the day.

36. The CHAIRMAN said that so far the inter-sessional working group of the Preparatory Committee had examined only the preamble and first two operative paragraphs of the Declaration. Accordingly, he invited the members of the Committee to communicate their proposals for amendments to the Contact Group Coordinator straight away, using the first version of the draft.

The meeting rose at 12 noon.